

Our Ref: FOI 5375

Ms. Jenna Corderoy

21, September 2017,

Dear Ms. Corderoy,

Business Services

Legal and Governance

Woodhill House

Westburn Road

Aberdeen AB16 5GB

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**Council Tax Arrears – Councillors
Freedom of Information (Scotland) Act 2002 – (“The Act”)**

We refer to your recent freedom of information request in respect of the above.

We understand from your email that you seek the following information:

1. The names of any serving councillors with council tax arrears.
2. The total amount owed by each of these councillors.
3. The reasons put forward for non-payment.
4. The action taken by the council to pursue these sums and the outcomes.

In terms of your request we are able to provide you with the following information:

1. Two councillors currently have council tax arrears one being Sebastian Leslie. We will not be releasing the name or details of the other councillor for the reasons set out below.
2. The sums due by each of the councillors listed above are as follows:

Sebastian Leslie – arrears from April 1st 2017: £3,748.09

In relation to points 1 and 2 above, we have considered and applied the case of DH v (1) Information Commissioner, (2) Bolton Council [2016] UKUT 0139 (AAC) where it was found that in terms of the freedom of information legislation there was a public interest in knowing which councillors are two or more months in arrears with their council tax payments.

The judge in the case did consider the extent to which a councillor failing to pay council tax should be considered a public or private matter. Whilst she concluded that was a private element, that in the context of being a councillor, it was also a public matter. However, the judge did not address the specific question of the

release of the details of newly elected councillors from prior to their election. Since there is no clear decision on that issue, the Council will not release the personal data collected prior to the election of councillors for the first time in May 2017. This can be justified on the basis that Section 112 of the Local Government Finance Act 1992 was not engaged and as such disclosure of the information is not necessary to meet the public interest test. The Personal Data exemption will be applied to this information.

Further, we have relied on the judgement in the above case as there is one councillor who is in more than two months arrears but we will not be releasing any information about this councillor. There are very exceptional circumstances that are so compelling that we are of the view that the councillor requires to be protected from exposure and that the consequences of the release of personal information are sufficiently adverse to prevent disclosure.

It is our view that the following exemption is relevant in terms of our non-disclosure:

PERSONAL DATA - EXEMPTION

Section 38(1) (b) – personal data where the "first condition" is satisfied

The information falls within the definition of "data" in the Data Protection Act 1998, and the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles; or***
- (ii) section 10 of the Data Protection Act (right to prevent processing likely to cause damage or distress).***

The First Data Protection Principle states:-

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and***
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.***

The Schedule 2 conditions are not met in terms of the information relating to former councillors of the authority as:

- (a)** the data subjects have not provided their consent regarding the release of this information.
- (b)** the processing is **not necessary for**;
 - (i)** the performance of a contract involving the data subject,
 - (ii)** for the purposes of entering into a contract with the data subject,
 - (iii)** the compliance with a legal obligation,
 - (iv)** the protection of the data subjects vital interests,
 - (v)** the administration of justice,

- (vi) the exercise of the functions of either House of Parliament,
 - (vii) any functions conferred to you by statute,
 - (viii) the exercise of the Crown or any government departments functions,
 - (ix) the purposes of making a 'good faith' disclosure in terms of the powers within the Terrorism Act 2000 or the Proceeds of Crime Act 2002.
- (c) although you may have a legitimate interest in obtaining information to ascertain whether councillors are in two or more months of council tax arrears, this interest is limited to serving councillors with current arrears for this year or since they were elected for the first time.
3. As a Council, we do not record the reasons for non-payment and we cannot provide you with this information.
4. All individuals who are in arrears are subject to the process as set out in Schedules 2 and 8 of the Local Government Finance Act 1992 which can be found [here](#). The Council website also has information about the recovery process and this can be found [here](#)
- 4.1 The Councillor identified above is at the following stages of the process for 2017/2018:

Sebastian Leslie – statutory reminders issued. Summary warrants have been granted and recovery of the debt sits with the Sheriff Officer. The next step will be instructing the Sheriff Officer to take further legal steps to recover the sum.

The legal steps may include an Earnings Arrestment, a Bank Arrestment and Sequestration.

The aim of the further action will be to secure full payment of the sums due as is the case with all individuals who reside in Aberdeenshire, who find themselves in this situation.

I trust that this is in order but should you have any further queries please do not hesitate to contact me as the officer responsible for responding to your request.

If you are at all dissatisfied with the way in which we have dealt with your request please refer to the further information attached.

Yours faithfully

Karen Wiles
Head of Legal & Governance

Further Information :

Aberdeenshire Council's Review Procedure under the Freedom of Information (Scotland) Act 2002:-

If you wish Aberdeenshire Council to review its actions and/or decisions with respect to your Request for Information, you should contact:-

FOI Review Officer,
Aberdeenshire Council,
Woodhill House,
Westburn Road,
Aberdeen
AB16 5GB

(e-mail foi@aberdeenshire.gov.uk);

no later than 40 days after you receive the Notice intimating the decision that you want to have reviewed.

Your request for review must be in writing or in another form which has some permanency and is capable of being used for subsequent reference (e.g. audio/video tape recording). You must state your name and address for correspondence. You must also give details of the information which you originally requested and the reasons why you are dissatisfied with the way in which your application for information has been dealt with.

The FOI Review Officer will arrange for your application for review to be considered by the Review Panel. The Review Panel will write to you informing you of its decision by not later than twenty working days after receipt of your request for a review. The Review Panel will also provide you with a statement of its reasons for arriving at the decision it has made.

Your Right to Complain to the Scottish Information Commissioner:

If you are dissatisfied with the Review Panel's decision, you may appeal to the Scottish Information Commissioner.

An appeal to the Scottish Information Commissioner must be made within six months, specifying:-

- the Request for Information to which the requirement for review by relates;
- the reasons for your dissatisfaction with the review decision;

An appeal can now be made online at the following address:

www.itspublicknowledge.info/Appeal

The Scottish Information Commissioner can be contacted at:-

Scottish Information Commissioner,
Kinburn Castle,
Doubledykes Road,
St Andrews, Fife, KY16 9DS
Telephone: 01334 464610;
Fax: 01334 464611;
Email: enquiries@itspublicknowledge.info
Web: www.itspublicknowledge.info/Appeal